

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

PAUL E. DAISEY,)	
)	
Defendant Below,)	
Appellant,)	
)	
v.)	C.A. No.: 1003003812
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

Eric G. Mooney, Esquire, counsel for Defendant.

ORDER

The Court is in receipt of Appellant's Notice of Appeal. After reviewing the record, the Court finds that it lacks jurisdiction under *11 Del. C. § 5920* and must dismiss.

FACTS

The Appellant appeared *pro se* before the Justice of the Peace Court on March 6, 2010 and entered guilty pleas to seven violations of Title 7 of the Delaware Code. At the time of entering his pleas, Appellant did not indicate on the court's jurisdictional form that he waived his right to trial in the Court of Common Pleas. The Justice of the Peace did not record any verbal waiver that might have occurred.

On May 20, 2010, the Justice of the Peace heard Appellant's Motion to Withdraw Guilty Plea. The Magistrate entered an Order denying Appellant's Motion on the grounds that the seven guilty pleas were knowingly, intelligently, and voluntarily entered. Thereafter, on June 2, 2010, Appellant filed this Appeal of the denial of his Motion To Withdraw Guilty Plea.

DISCUSSION

Before the Court is an effort to appeal an Order of the Justice of the Peace that denied Appellant's Motion to Withdraw Guilty Plea. Appellant contends, pursuant to *Shoemaker v. State*, 275 A.2d 431 (Del. 1977), that the absence of Appellant's written or recorded waiver of his right to trial in this Court constitutes a *prima facie* showing of the Justice of the Peace's lack of jurisdiction to accept the Appellant's guilty pleas. This Court, however, must dismiss this appeal because it is not appealable under *11 Del. C. § 5920*.

Title 11, Section 5920 of the Delaware Code limits a criminal defendant's right of appeal to the Court of Common Pleas to orders "in which the sentence shall be imprisonment exceeding 1 month or a fine exceeding \$100." The May 20, 2010 Order from which Appellant appeals is not a sentencing order of the nature contemplated by *11 Del. C. § 5920* and is, therefore, not within the appellate jurisdiction of this Court.

While it is true that the Justice of the Peace entered a sentencing order on March 6, 2010 that appears to satisfy the requirements of *11 Del. C. § 5920*, Appellant does not appeal that sentencing order here. Furthermore, any appeal of that order at this time is no longer timely under Court of Common Pleas Criminal Rule 39(a).

In summary, the Court must dismiss the Appeal because it does not concern an order "in which the sentence shall be imprisonment exceeding 1 month or a fine exceeding \$100." *11 Del. C. § 5920*. The Court's decision today does not preclude Appellant from seeking certiorari relief from another court if available.

Appellant's Appeal is **DISMISSED**.

IT IS SO ORDERED this _____ day of _____, A.D. 2010.

The Honorable Rosemary Betts Beauregard